



## 22 CFR Parts 22 and 42

[Public Notice: 12017]

RIN 1400-AF60

### Visas: Immigrant Visas; Certain Afghan Applicants

**AGENCY:** Department of State.

**ACTION:** Temporary final rule.

**SUMMARY:** This final rule (TFR) temporarily amends Department of State (Department) regulations to provide that Afghan nationals applying for an immigrant visa as an immediate relative as defined in the INA or in a family preference immigrant visas category are exempt from the requirement to pay an immigrant visa (IV) application processing fee and a domestic Affidavit of Support review fee.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], until December 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Andrea Lage, Acting Senior Regulatory Coordinator, Visa Services, Bureau of Consular Affairs, Department of State; telephone (202) 485-7586, [VisaRegs@state.gov](mailto:VisaRegs@state.gov).

### SUPPLEMENTARY INFORMATION:

#### I. What changes to 22 CFR 22.1 and 42.71 does this TFR make?

The Department is temporarily amending 22 CFR 22.1 and 42.71 to exempt Afghan nationals from the requirement to pay the IV application processing and domestic Affidavit of Support review fees if they are applying for an IV as an immediate relative as defined in section 201(b)(2)(A)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1151(b)(2)(A)(i) or in a family preference IV category as provided in section 203(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1153(a).

#### II. Why is the Department making these changes?

Since the fall of the Afghan government in August 2021, the United States has welcomed more than 88,000 Afghans through Operation Allies Welcome (OAW), an all-of-government effort to relocate to the United States citizens and lawful permanent residents who wished to leave Afghanistan, along with special immigrant visa (SIV) applicants, immediate family members of SIV applicants, and other Afghans at risk. Many additional Afghans who did not relocate to the United States through OAW but who qualify for an IV as an immediate relative or in a family preference IV category because they have qualifying relationships with a U.S. citizen or U.S. lawful permanent resident and seek to immigrate to the United States.

On August 31, 2021, the U.S. Embassy in Kabul, Afghanistan suspended operations indefinitely.<sup>1</sup> Since that time, the Department has continued its efforts to assist U.S. citizens, lawful permanent residents, and other Afghans at risk through its Office of the Coordinator for Afghan Relocation Efforts. In the absence of regular consular operations in Afghanistan, Afghans applying for an immigrant visa must apply and personally appear at a U.S. Embassy or consulate in another country.

Under section 222(a) of the INA, 8 U.S.C. 1152(a), every noncitizen applying for an immigrant visa is required to submit an application in the form and manner and at such place as prescribed by regulation. In accordance with the Department's regulations, an individual applying for an immigrant visa must pay the fee prescribed by the Secretary of State for the processing of immigrant visa applications, subject to limited, enumerated exceptions. 22 CFR 42.71; *see also* 22 CFR 22.1. Immigrant visa application processing fees are listed in Item 32 within the Department's Schedule of Fees for Consular Services ("Schedule of Fees"), published at 22 CFR 22.1. The immigrant visa application processing fee for an individual applying as an immediate relative or for a visa in a family preference IV category is \$325.

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<sup>1</sup> Security Message: Suspension of Operations, <https://af.usembassy.gov/security-message-suspension-of-operations/> (August 31, 2021).

Section 212(a)(4)(C)(ii) of the INA, 8 U.S.C. 1182(a)(4)(C)(ii), provides that the person petitioning for an applicant's admission, and any additional or alternative sponsor, as appropriate, must execute an affidavit of support (Form I-864) as described in section 213A of the INA, 8 U.S.C. 1183a. The National Visa Center reviews, for clerical completeness, Form I-864 and related documents for applicants who are the beneficiary of a Form I-130, Petition for Alien Relative, submitted to USCIS. The Department charges a fee for Affidavit of Support review when the affidavit is reviewed domestically. The current domestic Affidavit of Support review fee is \$120.

This temporary final rule will provide for fee exemptions to qualified applicants through December 31, 2024, and is designed to help Afghan nationals resettle and, in many cases, reunite with family members in the United States. These exemptions reflect the Department's ongoing commitment to resettle Afghan nationals at risk due to the fall of the Afghan government, as they will facilitate the reunification of Afghans with their qualifying family members in the United States. These fee exemptions are not retroactive.

The Department is publishing this rule as a temporary final rule, which will automatically expire on December 31, 2024. The Department anticipates that this duration is a sufficient time period for Afghan nationals who are at risk and who wish to immigrate to the United States to benefit from the fee relief. This rule applies to applications dated after the effective date of this rulemaking.

### **III. Regulatory Findings**

#### **A. Administrative Procedure Act**

As this rule involves a foreign affairs function of the United States, it is excepted from both the delayed effective date and notice and comment requirements of 5 U.S.C. 553(a)(1).

Under 5 U.S.C. 553(a)(1), notice-and-comment requirements of the Administrative Procedure Act do not apply "to the extent there is involved ... a military or foreign affairs function of the United States." This exemption applies when the rule in question "is clearly and

directly involved in a foreign affairs function.” *Mast Indus. v. Regan*, 596 F. Supp. 1567, 1582 (C.I.T. 1984) (quotation marks omitted). In addition, although the text of the Administrative Procedure Act does not require an agency invoking this exemption to show that such procedures may result in “definitely undesirable international consequences,” some courts have required such a showing. E.g., *Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980). This rule satisfies both standards.

This rulemaking to exempt Afghan nationals from certain IV fees clearly and directly involves foreign affairs, as the U.S. government’s commitment and efforts in furtherance of Operation Allies Welcome, Enduring Welcome, and successor operations to relocate and resettle Afghans who have provided valuable assistance to the U.S. government over the past two decades, and their family members, reflects one of the U.S. government’s most significant foreign policy goals in recent years. These measures specifically will significantly ease the financial burden of Afghan applicants seeking to join U.S. citizen or lawful permanent resident family members in the United States, clearly and directly reflecting U.S. foreign policy as the Department seeks to uphold its commitments to assist many Afghans and their family members who have assisted the U.S. government. Visa applicants from Afghanistan are currently unable to apply in their home country due to the suspension of operations of the U.S. Embassy in Kabul, and must travel to other locations, often at their own cost and risk. For such individuals, particularly those of whom are applying for immediate relative and family preference immigrant visas, the payment of visa processing fees and fees for domestic processing of the Affidavit of Support, are significant, with each applicant paying \$445 in immigrant visa processing fees alone, in addition to other associated required fees not addressed by this rulemaking, including for example the cost of a required medical examination and travel expenses to the United States. These significant costs can serve as a barrier to applicants completing their applications and being able to travel to the United States to reunite with family members, and consequently, this

rulemaking to exempt such applicants from certain fees clearly and directly involves a foreign affairs function.

Similarly, solicitation of public notice and comment to this foreign policy exercise would have definitely undesirable international consequences. Foreign governments or parts thereof may have interests in this rule as a matter of their foreign policy goals with respect to U.S. efforts to relocate and resettle Afghan Allies and other Afghans at risk, many of whom must transit and complete visa processing in third countries in order to immigrate to the United States. Foreign governments or entities, including entities that oppose U.S. objectives, may seek to disrupt and potentially harm the bilateral relationships between the U.S. and such countries through participation in the notice and comment process. As a DOJ representative stated during hearings on the Administrative Procedure Act, “[a] requirement of public participation in . . . promulgation of rules to govern our relationships with other nations . . . would encourage public demonstrations by extremist factions which might embarrass foreign officials and seriously prejudice our conduct of foreign affairs.” Administrative Procedure Act: Hearings on S.1663 Before the Subcomm. on Admin. Practice & Procedure of the S. Comm. on the Judiciary, 88th Cong. at 363 (1964). The time necessary to solicit and respond to public comments on the rule would further delay State’s ability to exempt these individuals from immigrant visa fees, significantly hampering State’s ability to advance the described foreign policy objectives of upholding the U.S. government’s commitment to the Afghan people.

**B. Regulatory Flexibility Act/Executive Order 13272: Small Business**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to perform an analysis of the potential impact of regulations on small business entities when regulations are subject to the notice and comment procedures of the APA. As this TFR is not required to be published for notice and comment under 5 U.S.C. 553, it is exempt from the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, as this action only directly impacts a small

subset of immigrant visa applicants, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act of 1996

In the Department's view, this TFR is not a major rule as defined in 5 U.S.C. 804. This TFR will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

D. Paperwork Reduction Act

This TFR does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 35.

E. Executive Order 12866

The Department has reviewed this TFR to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rule will temporarily exempt certain Afghan applicants from the payment of the IV application processing and domestic Affidavit of Support review fees. There are no anticipated costs to the public associated with this rule. The Office of Information and Regulatory Affairs has designated this rule as non-significant.

F. Executive Order 13175

The Department has determined this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

G. Executive Order 13563

Executive Order 13563 directs agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that

maximize net benefits (including potential economic, environmental, public health and safety, distributed impacts, and equity effects). The Department has reviewed the TFR under Executive Order 13563 and has determined that this rulemaking is consistent with the guidance therein.

#### H. Other

The Department has also considered this TFR in light of the Unfunded Mandates Reform Act of 1995 and Executive Orders 12372, 13132, and 13272; and affirms this rule is consistent with the applicable mandates or guidance therein.

### **List of Subjects**

#### **22 CFR Part 22**

Fees; Foreign Service; Immigration; Passports and visas

#### **22 CFR Part 42**

Administrative practice and procedure; Aliens; Fees; Foreign officials; Immigration; Passports and visas

Accordingly, for the reasons stated in the preamble, and under the authority 8 U.S.C. 1104 and 22 U.S.C. 2651(a), 22 CFR parts 22 and 42 are amended as follows:

### **PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES — DEPARTMENT OF STATE AND FOREIGN SERVICE**

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954-1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966-1970 Comp., p. 570.

2. Effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER], through December 31, 2024, § 22.1 is amended by adding Item 32(g) and Item 34(b) to the table to read as follows:

#### **§ 22.1 Schedule of fees.**

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## SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
* * * * *	
32. Immigrant Visa Application Processing Fee (per person)	
* * * * *	
(g) Afghan immediate relative and family preference visa applications	NO FEE.
* * * * *	
34. Affidavit of Support Review (only when reviewed domestically)	\$120
* * * * *	
(b) Afghan immediate relative and family preference visa applications	NO FEE
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### **PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105-277, 112 Stat. 2681; Pub. L. 108-449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901-14954 (Pub. L. 106-279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111-287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109-162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114-70, 129 Stat. 561).



4. Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through December 31, 2024, § 42.71 is amended by adding paragraph (b)(4) to read as follows:

**§42.71 Authority to issue visas; visa fees.**

\* \* \* \* \*

(b) \* \* \*

(4) *Exemption from fees for Afghan immediate relative and family preference immigrant visa applicants.* Consular officers shall exempt from immigrant visa fees Afghan applicants for immediate relative and family preference immigrant visas.

**Hugo Rodriguez,**  
*Principal Assistant Secretary for Consular Affairs,*  
*Department of State.*

**Billing Code: 4710-06**

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